



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**LON/00AH/LBC/2007/0036**

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**Premises:** 15 Bellfield, Pixton Way, Croydon, CRO 9JW

**Applicant:** Cyril Freedman Limited

**Represented by:**

**Respondent:** Mr C J Hayden

**Represented by:**

**Tribunal:** Ms MWDaley(LLB Hons)  
Mrs J Davies FRICS

**Date of Hearing:** 24/08/07

**Date of Decision:** 24/08/07

## **Application**

1. The Directions, given on 18 July 2007 required:-
  - (i) The Tribunal received an application dated 9 July 2007 under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 to determine whether the Respondent had breached a covenant or condition of the lease.
  - (ii) The Parties were required to provide each other with copies of all relevant documents in their possession.
  - (iii) The Respondent was required to prepare a response to the Applicant's case by 17 August 2007.
  - (iv) The Applicant and Respondent were required to prepare a bundle of the relevant documents by 17 August 2007.
  - (v) The matter was sent down for hearing on the 24 August 2007 at 1.30pm

## **Documents received:-**

2. The Tribunal received the following documents
  - (a) A bundle of Documents was received from Cyril Freedman Ltd dated 25 July 2007
  - (b) A letter from the Respondent Chris Hayden dated 15 August 2007

## **Matters in issue**

3. The burden of proof rests with the Applicant, and The Tribunal need to be satisfied:-
  - (a) That the leases include the covenant or condition relied on by the Applicant; and
  - (b) That if proved, the alleged facts constitute a breach of that covenant or condition.
  - (c) The Applicant was required to prove that there was a continuing, breach of covenant on the balance of probabilities.

## **The Law**

4. The relevant Law is set out below:-

S.168 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection is satisfied.

This subsection is satisfied if-

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,  
(2) (b) The tenant has admitted the breach, or  
(c) A court in any proceedings, or an arbitral Tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(3) A landlord under a long lease of a dwelling may make an application to a leasehold valuation Tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

**The Lease**

5. The Tribunal were given a copy of an undated lease between Cyril Freedman Ltd and Wildheath Management Ltd and Alan Henry Lindsay and Anne-Marie Lindsay of which the Respondent is the assignee of a term for 99 years from 8 January 2004.

6. Clause 6.7 (the Relevant term) states:-

*“To give the Lessor and to the Manager notice of every dealing with or transmission of the legal estate in the Premises within twenty-one days after the same shall occur and to pay to the Lessors a reasonable registration fee being not less than £30 and to the manager the costs incurred in carrying out its*

*obligations under clause 5 of the fourth Schedule herein together with any Value Added Tax which may be levied thereon."*

### **The Hearing**

7. Neither party attended the hearing and the Tribunal dealt with the matter as a paper determination.
8. The Applicant in their brief statement of case set out that the alleged breach was the Respondent's failure to provide Notice of Transfer and a charge as set out in the lease. The letter at point 7 stated:-

*There is some urgency in dealing with the case. As a result of this failure and because of outstanding arrears we issued proceedings against the former lessee and have obtained judgement. Patently this is unfair.*

9. The Respondent in a letter dated 15 August 2007, replied in accordance to the directions and stated

*"I was naïve to the costing that I would incur in relation to my first home. I was paying my ground maintenance charge by direct debit but unknown to myself was not aware that I had to pay my quarterly charge. This became apparent when I accidentally opened mail from the previous owner three years later stating that charges were overdue...*

*Four months later to my surprise I had the tribunal served against myself for failure to comply with the leasehold agreement. I immediately paid all outstanding costs and then harassed my solicitor to act and serve the Notice of Transfer..."*

10. In the letter the Respondent also informed the Tribunal that the delay was due to his solicitors Alan Bloc Solicitors and states further  
*Now that the property is in my name and I am fully aware of these charges there shall be no delay in future payments."*
11. The Applicant did not respond to the letter and no further information was presented to the Tribunal.

## Determination of the Application

12. The Tribunal considered the following issues:-

- (a) Firstly whether the Respondent had breached the terms of the lease relied on by the Applicant in the application
- (b) Whether on a balance of probabilities the breach existed at the date of the hearing.

13. The Tribunal determined that the Respondent was in Breach of clause 6 (7)

The Tribunal reached its determination on the basis of the letter from the Respondent that admitted that the Notice of Transfer had not been served within the 21 days which is required by the terms of the lease. As in the Letter the Respondent states "*Alan Bloc dealt with the purchase of my flat and failed to serve Notice of Transfer to the Freeholder.*"

14. As clause 6(7) required the notice to be served within 21 days, the Respondent could not retrospectively comply with the clause and that in the circumstance a technical breach continued. The Tribunal has however not received any further documentation from the Applicant, denying that the Notice of Transfer has been served.

15. The Tribunal therefore determine that the Respondent is in breach of Covenant, but note in the absence of evidence to the contrary, that on the evidence before it the Respondent has now complied with the requirement to serve the Notice of Transfer and that (insofar as the Respondent is able to given the terms of the lease)The breach has been remedied.

Chairman.....

*M. Kelly*

Date.....

*24 - August 2007*